

**ALLOCATION COMMITTEE
MINUTES
August 4, 2021**

A meeting of the Allocation Committee was held on Wednesday, August 04, 2021 at 10:02 a.m. at the District Office 31717 United Avenue, Pueblo, Colorado 81001 and via Zoom virtual conference.

Chairman Carl McClure announced a quorum was present.

COMMITTEE MEMBERS PRESENT:

Carl McClure, Chairman; Howard “Bub” Miller (via Zoom), Vice Chairman; Andy Colosimo, Tom Goodwin, Alan Hamel (via Zoom), Curtis Mitchell, Bill Long and James Broderick

COMMITTEE MEMBERS ABSENT AND EXCUSED:

None

OTHERS PRESENT:

Kalsoum Abbasi, Colorado Springs Utilities (via Zoom); Kent Ricken and Dan Tucker, CWPDA/AGUA; Garrett Markus, Kevin Meador (via Zoom), Margie Medina, Leann Noga, Patty Rivas (via Zoom), and Chris Woodka, Southeastern Colorado Water Conservancy District (District) staff.

APPROVAL OF MINUTES:

Chairman McClure confirmed that members of the Committee received their copy of the July 1, 2021 Joint Resource & Engineering and Allocation Committee minutes, and asked if there were any corrections or additions. Tom Goodwin moved, Andy Colosimo seconded, to approve the minutes. Motion passed unanimously.

PRESENTATIONS:

AGRICULTURAL FIRST RIGHT OF REFUSAL PILOT PROJECT

Garrett Markus reported the Fort Lyon Pilot Project began in 2014 to investigate the feasibility of a future District-wide plan to ensure that return flows are allocated equitably and to maximize utilization of all Fry-Ark Project water and Return Flows. The Fort Lyon Canal Company was the first to participate in the agricultural first right of refusal. On the sixth year, the Rocky Ford Highline and Oxford Farmers Ditch offered a solution that would help the District understand what other options are available to the agricultural stakeholders. However, there still was not a clear understanding of what a basin-wide agricultural first right of refusal would look like and if it was possible to implement. In the 2020 February Committee meeting, Wilson Water Group provided a scope of scenarios of possible long-term outcomes of the Agricultural First Right of Refusal (AFRR) Program. The scenarios provided are to aid in policy decisions.

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The three metrics that each of the scenarios are compared against are:

- 1) Beneficiaries: Who will be able to benefit from the Return Flows in relation to the District's irrigated acreage?
- 2) Equitability: How many Return Flows per acre are allocated by utilizing the AFRR and who loses access to their Return Flows?
- 3) Administration: What accounting and modeling is required for each scenario and understand the feasibility and complexity of administration for each scenario?

By direction from the 2020 March Committee meeting, Lisa Brown from Wilson Water Group embarked on a "usage study" to help the Committee understand the relative use of replacement water for sole-source wells, supplemental wells, and efficiency 'Rule 10' acres on an acre-foot per acre basis.

District staff worked internally to summarize the lessons learned from the operation of the ongoing Fort Lyon Pilot Program and the Wilson Water Groups studies mentioned above to draft an agricultural first right of refusal program to be vetted through Wilson Water Group and Burns, Figa, & Will to ensure that we are adhering to past decrees, stipulations, and engineering. Through this process, Burns, Figa, & Will revised the Policy Concerning Sale of Return Flows from Fryingpan-Arkansas Project Water to reflect the agricultural first right of refusal and reorganized the policy for clarity.

The Proposed Program:

- Through the Pilot Program, District staff determined that the most equitable means for allocating agriculture Project Return Flows is to allocate the water to agricultural entities on a "farm unit" basis.
- A "farm unit" is "a field or group of fields that have common wells, irrigation efficiencies, and a landowner or land user."
- Each RRA (Reclamation Reform Act) eligible acre with a depletion will be eligible for a pro-rate allocation of Return Flows
- Water will be treated as User-Supplied water to the Administering Organizations
 - AGUA, CWPDA, LAWMA, and LAVWCD
- The "need," based on depletions, for Rule 10 allocations will be considered for an equitable allocation (Rule 10 acres will be eligible for an allocation)

For HI Modeling the Rule 10 will take the allocation via the canal/ditch, Kent Ricken clarified.

Next, stakeholders meetings will be held for west of Pueblo, Pueblo, North of Pueblo (FVA), and east of Pueblo. The feedback gathered will be reviewed by the Allocation Committee and incorporated into the amended *Policy Concerning Sale Of Return Flows From Fryingpan-Arkansas Project Water* for approval.

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PROPOSED AMENDMENTS TO POLICY CONCERNING SALE OF RETURN FLOWS FROM FRYINGPAN-ARKANSAS PROJECT WATER

Under the District's Return Flow Policy, the District sells return flows generated from first-use Fryingpan-Arkansas Project ("Project") Water to eligible entities within the District's boundaries. Under current practices, Project Water is allocated to both municipal and agricultural entities (i.e., ditch and canal companies). Each agricultural entity has a right, under certain conditions, to purchase the return flows generated by that entity's first use of its allocated Project Water. The Return Flow Policy currently includes three rights of first refusal for agricultural entities:

- Agricultural entities have the right to purchase the return flows they generate from their use of Project Water, where physically possible (the "**Agricultural Right of First Refusal**").
- Each agricultural entity has the right to purchase Project Return Flows it generated but did not claim at the time of initial allocation, to the extent those return flows remain unclaimed after the initial allocation and the District exchanges such return flows into Pueblo Reservoir pursuant to its Decree in Case No. 01CW151 (the "**Agricultural Right to Exchanged Project Return Flows**").
- Winter Water Storage Program participants ("WWSP Participants") without their own storage facilities, may purchase agricultural Project Return Flows that the District exchanges into Pueblo Reservoir to the extent storage of exchanged Project Return Flows prevents those WWSP Participants' from storing Winter Water in Pueblo Reservoir (the "**WWSP Right of First Refusal**").

The District included the Agricultural Right of First Refusal in its original Return Flow Policy adopted in 1994. The Agricultural Right to Exchanged Project Return Flows and the WWSP Right of First Refusal apply only to return flows exchanged into Pueblo Reservoir under Case No. 01CW151, the District's case adjudicating exchanges of Project Return Flows. These rights were developed and adopted in 2004, through settlement negotiations with Arkansas Valley Ditch Association (AVDA) and Catlin Canal Company in that case.

Pilot Program and Proposed New Basis for Allocation

In 2014, the Fort Lyon Canal Company requested to purchase and use Project Return Flows to replace depletions in Rule 14 plans and to maintain return flows in Rule 10 plans. Following that request, the District implemented a pilot program to evaluate the use of Project Return Flows in those plans and how such use would impact allocations and the agricultural rights of first refusal outlined in the Return Flow Policy. As a result of that pilot program, District staff proposes to modify the basis on which the District allocates return flows to eligible entities. Through the pilot program, District staff determined that the most equitable means of allocating Project Return Flows is to allocate the water to agricultural entities on a "farm unit" basis, rather than on the basis of each entity's first use of Project Water. District staff defines a "farm unit" as "a field or group of fields that have common wells and a landowner or land user."

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Revisions to Return Flow Policy

Under District staff's proposed modification to the basis for return flow allocations, agricultural entities will remain entitled to purchase Project Return Flows in the initial allocation, but this right will no longer be tied to the return flows generated by each entity's first use of its allocated Project Water. Instead, the District's initial allocation of Project Return Flows to each agricultural entity will be based upon the stated needs and beneficial uses for such water on eligible irrigated acres on individual farm units within that entity. See Paragraph 8, Revised Return Flow Policy. This paragraph clarifies that District staff will continue to determine an applicant's eligible irrigated acres in consultation with Reclamation, and includes a new provision defining a "farm unit," as discussed above.

As a result of the District's settlement stipulations with AVDA and Catlin in Case No. 01CW151, modifications to the Return Flow Policy may not (without their consent) alter AVDA's and Catlin's rights to purchase exchanged return flows under the Agricultural Right to Exchanged Project Return Flows and the WWSP Right of First Refusal. Thus, District staff proposes no changes to the existing Agricultural Right to Exchanged Project Return Flows and the WWSP Right of First Refusal. These rights of first refusal in exchanged return flows now appear in Paragraph 9 of the Revised Return Flow Policy.

As a result of the Pilot Program, District staff proposes to add a new provision to the Return Flow Policy, specifying that agricultural Project Return Flows may be used for agricultural irrigation, including the replacement of depletions from wells used for agricultural irrigation (i.e., in Rule 14 plans) and for the replacement of net return flows diminished by surface irrigation improvements (i.e., in Rule 10 plans). See Paragraph 10, Revised Return Flow Policy.

Paragraph 11, which addresses the District's decreed rights to exchange return flows, includes a new sentence to address the Division Engineer's Office's administration of replacement plans that involve administrative exchanges below Pueblo Reservoir.

Paragraph 13, provides that Project Return Flows shall not be used to maintain or replace return flows from historical irrigation use of agricultural water rights that have been changed to new uses.

Reorganization of the Policy

Many of the remaining revisions to the Return Flow Policy reorganize the Policy into new sections for municipal and agricultural allocations, and for general terms and conditions that are broadly applicable to the allocation and use of Project Return Flows. The Policy also now includes a separate, introductory section for the terms specific to the application process. The policy redline shows in green the provisions that were moved from one section to another.

Discussion regarding simplifying paragraphs 2 and 3 were discussed, it was noticed this is policy not the application process. However, possible changes to the application can be made.

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ACTION ITEM:

None

INFORMATION ITEM

None

OTHER BUSINESS

None

NEXT MEETING

Thursday, September 2, 2021 at 1:00 p.m.

ADJOURN

Chairman McClure adjourned the meeting at 12:19 p.m.

Respectfully submitted,

Garrett J. Markus, P.E.

Water Resources Engineer